

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Thomas Massey,

Petitioner,

v.

Case No. 1:08cv514

Warden, London Correctional Institution,

Judge Michael R. Barrett

Respondent.

ORDER

This matter is before the Court on the Report and Recommendation filed by the Magistrate Judge on November 10, 2009 (Doc. 17).

Proper notice has been given to the parties under 28 U.S.C. § 636(b)(1)(C), including notice that the parties would waive further appeal if they failed to file objections to the Report and Recommendation in a timely manner. See United States v. Walters, 638 F.2d 947 (6th Cir. 1981). The Court notes, however, that though such notice was served upon Petitioner, it was returned to the Court due to Petitioner's failure to apprise the Court of his change of address. In this Court's notice to Petitioner on applicable court procedures, which Petitioner received, Petitioner was ordered to inform the Court promptly of any change of address. By failing to keep the Court apprised of his current address, Petitioner demonstrates a lack of prosecution of his action. See, e.g., Theede v. United States Department of Labor, 172 F.3d 1262, 1265 (10th Cir. 1999)(Failure to object to a Magistrate Judge's Report and Recommendation due to delay resulting from party's failure to bring to the court's attention a change in address constitutes failure to object in a timely manner. Because the Recommendation was mailed to the last known address, it was properly served, and party waived right to

appellate review). See also *Jourdan v. Jabe*, 951 F.2d 108, 109 (6th Cir. 1991)(A *pro se* litigant has an affirmative duty to diligently pursue the prosecution of his cause of action); *Barber v. Runyon*, No. 93-6318, 1994 WL 163765, at *1 (6th Cir. May 2, 1994) (A *pro se* litigant has a duty to supply the court with notice of any and all changes in his address). No objections to the Magistrate Judge's Report and Recommendation have been filed.

Having reviewed this matter de novo pursuant to 28 U.S.C. 636, this Court finds the Magistrate Judge's Report and Recommendation to be correct. Accordingly, it is **ORDERED** that the Report and Recommendation of the Magistrate Judge is hereby **ADOPTED**. Petitioner's petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 (Doc. 1) is DENIED with prejudice consistent with the opinion of the Magistrate Judge.

A certificate of appealability should not issue with respect to petitioner's claims for relief under the applicable two-part standard enunciated in *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). With respect to any application by petitioner to proceed on appeal in *forma pauperis*, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of any Order adopting this Report and Recommendation would not be taken in "good faith," and therefore **DENIES** petitioner leave to appeal in *forma pauperis* upon a showing of financial necessity. See Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997).

IT IS SO ORDERED.

s/Michael R. Barrett
United States District Judge